

Criminal Penalties for Wildlife Trafficking: A Green Victimology Perspective

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Abstract. This study focuses on the analysis of the application of the green victimology concept in criminal penalties for the trafficking of protected wildlife in Indonesia. This is a crucial issue since protected wildlife has not received proper attention as victim of crimes and is still seen as an object of trafficking. The study analyses ten court decisions in the last 10 years that have decided on protected wildlife trafficking cases. The purpose of this study is to identify how the green victimology concept views the criminal imposition of protected wildlife trafficking. The method used is normative legal research with a case study and conceptual approach. The results of this study show that green victimology is important to consider as a perspective that can aid in criminal sentencing. This is derived from the notion that recognizing animals as victim of crime will provide a more comprehensive perspective in looking at the entire justice system. This study also seeks to formulate a number of parameters for the application of green victimology concept in criminal sentencing that combines CITES, IUCN Red list, and deterrent sentencing objectives as key parameters for criminal sentencing. Based on these parameters, the authors did not find a certain pattern in the criminal imposition of wildlife trafficking cases. This can have implications from the absence of a clear philosophical basis, the potential for criminal disparities to conflict with the values of justice that are developing in society. This study recommends that guidelines for criminal penalties in wildlife trafficking cases be prepared by using the green victimology concept as the primary perspective basis. This is so that the verdict can accommodate the recognition of animals as victims and is oriented towards prevention efforts for crimes of similar nature.

Keywords: Green Victimology, Trafficking in Protected Wildlife, Criminal Punishment.

Abstrak. Penelitian ini berfokus pada analisis terhadap penerapan green victimology dalam penjatuhan pidana atas perkara perdagangan satwa liar yang dilindungi di Indonesia. Isu tersebut penting dikarenakan satwa liar yang dilindungi belum mendapatkan perhatian yang layak sebagai korban kejahatan dan masih dipandang sekedar sebagai objek perdagangan. Penelitian ini akan menganalisis sepuluh putusan pengadilan dalam rentang 10 tahun terakhir yang memutus perkara perdagangan satwa liar yang dilindungi. Tujuan penelitian ini adalah untuk mengetahui bagaimana green victimology memandang penjatuhan pidana atas perdagangan satwa liar yang dilindungi. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan kasus dan konseptual. Hasil penelitian ini menunjukkan bahwa green victimology penting untuk dipertimbangkan sebagai perspektif yang dapat membantu dalam penjatuhan pidana. Hal tersebut dikarenakan dengan merekognisi hewan sebagai korban kejahatan akan memberikan perspektif yang lebih komprehensif dalam memandang keadilan. Penelitian ini juga berusaha untuk merumuskan sejumlah parameter aplikasi green victimology dalam penjatuhan pidana yang mengkombinasikan CITES, IUCN Redlist, tujuan pemidanaan detterent sebagai parameter kunci penjatuhan pidana. Berdasarkan parameter tersebut, kami tidak menemukan adanya pola tertentu dalam penjatuhan pidana perkara tindak pidana perdagangan satwa liar. Hal tersebut dapat berimplikasi dari ketiadaan dasar filosofis yang jelas, potensi disparitas pemidanaan hingga bertentangan dengan nilai keadilan yang berkembang dalam masyarakat. Penelitian ini merekomendasikan untuk disusun pedoman penjatuhan pidana dalam kasus perdagangan satwa liar dengan menggunakan green victimology sebagai basis perspektif utama. Hal tersebut agar putusan yang dijatuhkan dapat mengakomodir rekognisi hewan sebagai korban dan berorientasi pada upaya pencegahan kejahatan dengan karakteristik serupa.

Kata kunci: Green Victimology, Perdagangan Satwa Liar yang Dilindungi, Penjatuhan Pidana.

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INTRODUCTION

This research focuses on the study of applicable policies in the criminal imposition of criminal penalties for the crime of trafficking of protected wildlife in Indonesia. According to the authors, this research is imperative to be conducted as it is based on four reasons. *First*, the stance of protected wildlife in regards to the crime of illegal trafficking takes off from the fact that it is often not acknowledged as being who share the same intrinsic value as humans. Through the lens of ecocentrism, law and regulation must recognize the intrinsic values of the sphere of life and non-human entities.¹ Recognition in the legislation is necessary to use the approach of animal and species rights,² so as to clarify the construction of the legal position of wildlife as victim of crime.

Second, the rampant cases of trafficking in protected wildlife. Indonesia, Jamaica and Honduras became the first ranked countries to be included in the wildlife export network from 1998 to 2018.³ Another example that can illustrate how serious this problem is, are the data on plant and wildlife circulation operations in Indonesia from 2015 to 2023, reaching 484 operations with details of 248,115 total animal heads and 18,536 total animal body parts.⁴ This problem is correlated with the reality that there has been a phenomenon of '*defaunation*' which has implications for a decline of 48% of the total 71,000 species of animal population since the era of the industrial revolution.⁵

Third, the trafficking of protected wildlife is one of the environmental crimes that has a significant impact on the ecosystem. The United Nations Environment Programme (UNEP) released a report entitled "*The State of Knowledge of Crimes that have Serious*

¹ Rob White, "Ecocentrism and Criminal Justice," *Theoretical Criminology* 22, no. 3 (August 30, 2018): 342–62, <https://doi.org/10.1177/1362480618787178>.

² Rob White, *Environmental Harm an Eco Justice-Perspective* (Bristol University Press, 2013), <https://doi.org/10.2307/j.ctt9qgsq7>.

³ Jia Huan Liew et al., "International Socioeconomic Inequality Drives Trade Patterns in the Global Wildlife Market," *Sci. Adv* 7, no. 5 (2021), <https://doi.org/https://doi.org/10.1126/sciadv.abf7679>.

⁴ Direktorat Jenderal Penegakan Hukum Lingkungan Hidup dan Kehutanan Kementerian Lingkungan Hidup dan Kehutanan, "Laporan Kinerja Tahun 2023," 2024, https://gakkum.menlhk.go.id/assets/info-publik/LKJ_Ditjen_PHLHK_2023_rev0_compressed.pdf.

⁵ Catherine Finn, Florencia Grattarola, and Daniel Pincheira-Donoso, "More Losers than Winners: Investigating Anthropocene Defaunation through the Diversity of Population Trends," *Biological Reviews* 98, no. 5 (October 1, 2023): 1732–48, <https://doi.org/10.1111/brv.12974>.

Impacts on the Environment", outlining that there are five types of environmental crimes that are most global today, including wildlife trafficking, illegal logging, illegal fishing, pollution crimes and illegal mining.⁶ *The International Criminal Police Organization* (Interpol) outlines that crimes against wildlife have reached a worrying point both because of their consequences on society, public health and the global economy that these crimes are identified as serious crimes.⁷ The serious impact on wildlife trade is also considered to have an effect on climate change and biodiversity sustainability.⁸ The same view was likewise outlined by the SKALA Association together with the Ministry of Environment and Forestry of the Republic of Indonesia that illegal wildlife trade is a serious crime.⁹

Fourth, the crime of wildlife trafficking that is heavily protected is influenced by the perspective of animals are considered as mere objects or commodities. The emergence of various criminal activities such as illegal hunting or capturing, wildlife smuggling to the transactions of wildlife on the black market is a consequence of the view of wildlife as a market commodity.¹⁰ According to Lorimer, this perspective is due to the influence of anthropocentrism, capitalism and neoliberalism in the framework of public policy towards wildlife.¹¹ Anthropocentrism is rooted on the belief that it is human activity that influences the wildlife, natural habitats and climates around the world.¹²

Wildlife, especially the variety of protected species at the end of their position, is degraded only as an object and has implications for the disqualification of animals as victims of crime. In fact, in its development, it is crucial to recognize animals as one of

⁶ United Nations Environment Programme, "The State of Knowledge of Crimes That Have Serious Impacts on the Environment," 2018.

⁷ INTERPOL, "Wildlife Crime: Closing Ranks on Serious Crime in the Illegal Animal Trade," <https://www.interpol.int/en/News-and-Events/News/2020/Wildlife-crime-closing-ranks-on-serious-crime-in-the-illegal-animal-trade#:~:text=Wildlife%20crime%20has%20far%2Dreaching,the%20wildlife%20criminal%20has%20changed.,> 2020.

⁸ United Nations Office on Drugs and Crime, "World Wildlife Crime Report Trafficking in Protected Species," 2020.

⁹ Perkumpulan SKALA, "Potret Perdagangan Ilegal Satwa Liar Di Indonesia," 2016, www.PerkumpulanSKALA.net.

¹⁰ Steven Broad, "Measuring The Scope and Scale of Wildlife Crimes" (Geneva, Switzerland: Global Initiative Against Transnational Organized Crime, 2024), www.globalinitiative.net.

¹¹ Jamie Lorimer, *Wildlife in the Anthropocene Conservation after Nature* (Minneapolis, London: University of Minnesota Press, 2015).

¹² Jocelyn Champagnon et al., "Silent Domestication of Wildlife in the Anthropocene: The Mallard as a Case Study," *Biological Conservation* 288 (December 2023): 110354, <https://doi.org/10.1016/j.biocon.2023.110354>.

the non-human victims in the scope of crimes against the environment.¹³ Animal recognition as non-human victims is one of the basic ideas in the concept of *green victimology*.¹⁴ Based on the four urgency in the problem of wildlife trafficking crimes above. The authors assess that one of the important issues that needs to be investigated further is how the real condition of how serious the crime of wildlife trafficking and its vulnerable position is reflected in various court decisions. The authors has collected 10 court decisions that criminalized the crime of trafficking of protected wildlife in the last 10 years as the object of research and will be analyzed more deeply using the perspective of *green victimology*.

The idea of this research is the development of several recent studies such as; *first*, an article entitled "Analysis of the Crime of Trafficking in Protected Wildlife (Study of the Bantul District Court Decision)"¹⁵, which examined three criminal verdicts on the trade in protected wildlife under the jurisdiction of the Bantul District Court. *Second*, the article entitled "Disparity in Criminal Penalties Against Protected Animal Traffickers"¹⁶, which examines the disparity of ten criminal convictions for trafficking in protected wildlife. The aspects that the author wants to develop include differences in research objects and the author uses *green victimology* as a perspective in analyzing criminal sentencing patterns. Thus, this research is aimed at analyzing the main issues, namely; how green victimology concept views criminal penalties for wildlife trafficking? The ten criminal verdicts show that indeed wildlife is only seen as an object of commodity without considering its protection status so that it has not been recognized as a non-human victim. On the other hand, it has been identified that the pattern of criminal punishments imposed were unjustly light from the maximum

¹³ White, *Environmental Harm an Eco Justice-Perspective*.

¹⁴ Agus Salim, Ria Anggraeni Utami, and Zico Junius Fernando, "GREEN VICTIMOLOGY: SEBUAH KONSEP PERLINDUNGAN KORBAN DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA," *Bina Hukum Lingkungan* 7, no. 1 (October 30, 2022): 59–79, <https://doi.org/10.24970/bhl.v7i1.302>.

¹⁵ Widodo and Francisca Romana Harjiyatni, "Analisis Terhadap Tindak Pidana Perdagangan Satwa Liar Yang Dilindungi (Studi Putusan Pengadilan Negeri Bantul)," *Jurnal Kajian Hasil Penelitian Hukum* 3, no. 1 (2019): 701–11, <http://e-journal.janabadra.ac.id/index.php/JMIH>.

¹⁶ Bella Cinu Raya and Yeni Widowati, "Disparitas Penjatuhan Pidana Terhadap Pelaku Perdagangan Satwa Yang Dilindungi," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 1 (June 26, 2021), <https://doi.org/10.18196/ijclc.v2i1.12063>.

criminal threat as regulated in Law Number 5 of 1990 on the Conservation of Biological Natural Resources and Their Ecosystems (KSDA Law).

METHODOLOGY

This is normative legal research that focuses on the study of ten criminal verdicts for the crime of trafficking of protected wildlife as regulated in Law Number 5 of 1999 on the Conservation of Biological Natural Resources and Their Ecosystems. The selection of the ten court decisions is based on an effort to show the imposition of a criminal sentence with the intention of providing a sampling of every case that occurred in the last ten years. Although the KSDA Law has been amended in Law Number 32 of 2024, the ten objects of this research still adhered to the previous law, hence the primary legal material that the authors use remain referring to the previous law. The case study approach was used to examine the "*ratio decidendi*" in the ten court decisions that are the object of this research. As well as a conceptual approach in describing the conception of *green victimology*. Both approaches are used because in this study, the theoretical aspects of green victimology will be described first and then move on to its application in casuistic court decisions. The primary legal materials in the form of ten court decisions and Law Number 5 of 1999 on the Conservation of Biological Natural Resources and Their Ecosystems will be analyzed using descriptive-qualitative method.

RESULT AND DISCUSSION

Criminal Penalties for Wildlife Trafficking: A Green Victimology Perspective

1. Criminal Punishment in the Perspective of *Green Victimology*

The fundamental idea of *green victimology* concept is closely related to the discourse of victims in environmental crimes. The victim is generally identified as a person who has suffered injury or trauma due to an act that is not lawful according to the law.¹⁷

¹⁷ Lindy Smith et al., "The Role of Victims of Crime in the Criminal Trial Process" (Victorian Law Reform Commission, 2016).

The definition of victims is likewise explained by Muladi that victims are people who are both individuals and collectives who experience a loss, ranging from physical, mental, economic to interference with the fulfillment of their rights, including abuse of power.¹⁸ Based on the conception of victimization, in the study of *green criminology*, there is a discussion about whether environmental crimes cause losses that directly damage the ecosystem (*dire victimization*) and cause losses suffered by certain species in the destruction of the ecosystem (*indirect victimization*).¹⁹

Pursuant to the origin of *green criminology*, Christopher Williams in 1996 published a study entitled "*An Environmental Victimology*" which outlined the urgency of victimology based on an environmental perspective due to the development of the environmental justice movement, the development of the definition of victims and efforts to make the environment an object that experiences victimization due to a criminal act in a very anthropocentric way.²⁰ The research was further developed, one of which was in a popular publication by Rob White entitled "*Green Victimology and Non-Human Victim*" in the study revealed that environmental crimes cause impacts such as the snowball effect, environmental violations have not been accommodated as "*white collar crimes*" and "*abuse of power*," as well as victims of environmental crimes ranging from human and non-human.²¹

White also elaborates that the basic idea in *green victimology* seeks to accommodate philosophical values rooted in the ecocentrism paradigm. This will play an important role in conceptualizing victims that are not limited to humans only, but also non-human victims who are recognized by their entities because they have the same intrinsic value as humans.²² This conception was agreed in another research that states that victims of environmental crimes are also non-human entities and have consequences for the need to expand the scope of victims, including every member of

¹⁸ Muladi, *HAM Dalam Perspekti Sistem Peradilan Pidana* (Bandung: Refika Aditama, 2005).

¹⁹ Michael J. Lynch and Paul B. Stretesky, "*Global Warming, Global Crime: A Green Criminological Perspective*" on *Global Environmental Harm*, ed. Rob White (London: Willan, 2010), <https://doi.org/10.4324/9781843927983>.

²⁰ Christopher Williams, "An Environmental Victimology," *Social Justice* 23, no. 4 (1996): 16–40, <https://about.jstor.org/terms>.

²¹ Rob White, "Green Victimology and Non-Human Victims," *International Review of Victimology* 24, no. 2 (May 1, 2018): 239–55, <https://doi.org/10.1177/0269758017745615>.

²² White.

the ecosystem and provide protection to these victims through the framework of substance, structure and legal culture.²³

The recognition of non-human entities as victims of environmental crimes philosophically means acknowledging the intrinsic value inherent in them. Therefore, the author argues that every member of the ecosystem, both biotic and abiotic, has the potential to be a victim of an environmental crime and has the same degree and is not determined based on its value to humans. The conceptual description of *green victimology* will be the basis for the discussion of this research on criminal imposition.

Criminal sanction is closely related to the punishment of the perpetrator of a crime justified by law on the basis that the perpetrator has caused suffering to others.²⁴ The most important aspect in a criminal sentence is the reason or basis for the punishment imposed on the perpetrator of the crime. Theoretically, the basis of punishment is based on philosophical considerations such as the belief in God, certain philosophical values and legal protection.²⁵ The basis for the penalty, in Article 50 of Law Number 48 of 2009 on Judicial Power has been expressly regulated that a court decision must contain the reasons and basis for the decision, either based on laws and regulations or unwritten laws as the basis for adjudicating.²⁶ In fact, in Law Number 1 of 2023 on the Criminal Code (KUHP 2023), Article 51 has been regulated regarding the purpose of punishment and in Article 54 it has been regulated regarding mandatory consideration in punishment.²⁷

The imposition of the penalty requires clarity and adequacy of legal considerations by the judge which is the basis for a verdict that reflects the values of truth and justice.²⁸

²³ Salim, Utami, and Fernando, "GREEN VICTIMOLOGY: SEBUAH KONSEP PERLINDUNGAN KORBAN DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA."

²⁴ Ayu Efridadewi, *Modul Hukum Pidana* (Tanjungpinang: UMRAH Press, 2020).

²⁵ Fitri Wahyuni, *Dasar Dasar Hukum Pidana Di Indonesia*, 1st ed. (Tangerang Selatan: PT Nusantara Persada Utama, 2017).

²⁶ Undang-Undang Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman" (2009).

²⁷ Undang-Undang Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana" (2023).

²⁸ Artidjo Alkostar, "Kebutuhan Responsifitas Perlakuan Hukum Acara Pidana Dan Dasar Pertimbangan Pidanaan Serta Judicial Immunity" (Jakarta, 2011), https://kepaniteraan.mahkamahagung.go.id/images/artikel/fondasi%20dan%20pertimbangan%20pidanaan%20wadah%20pidana%20artidjo%20alkostar_edited.pdf.

Therefore the link between criminal sentencing and the basis of punishment lies in the formulation of the philosophical basis why a person deserves to be sentenced. This requires a clear criminal purpose and an obligation to consider various things such as the form of the perpetrator's misconduct, the perpetrator's inner attitude, the consequences caused to the legal value and justice that lives in society as an unwritten law.

The authors argue that if the *green victimology* concept is materialized in the criminal imposition of the crime of trafficking of protected wildlife, it will be a perspective to strengthen and help formulate the philosophical foundation, the purpose of the crime and give rise to a number of parameters that need to be considered in a verdict. *Green victimology* can also be used as a perspective by judges in fulfilling their obligations in examining environmental cases, as stipulated in Article 3 of Supreme Court Regulation Number 1 of 2023 on Guidelines for Adjudicating Environmental Cases, namely regarding the obligation to explore, to comply and to understand the legal values of environmental protection and management as well as a sense of justice.²⁹

The philosophical value offered in *green victimology* is the recognition of the equality of all members of the ecosystem which includes human and non-human elements based on the same intrinsic values that are separated from human needs alone. As the authors have presented, this has the consequence of recognizing non-human elements as victims of crime. In the context of this research, protected wildlife must be recognized as victim of crime, not just as objects or limited to evidence. *Green victimology* concept can be used as a tool in strengthening the basis for criminalizing the crime of trafficking in protected wildlife. One of them is in order to achieve the goal of the criminal policy, namely the prevention and control of crime through an applicative/judicial policy framework.³⁰

Therefore, it is necessary to deepen how the *green victimology* concept can be applied in the applicable policy of imposing penalties for wildlife trafficking crimes? Certain parameters are needed that can be applied operationally to justify whether a criminal

²⁹ Peraturan Mahkamah Agung Republik Indonesia, "Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2023 Tentang Pedoman Mengadili Perkara Lingkungan Hidup" (2023).

³⁰ Muladi and Barda Nawawi Areif, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

imposition has used the *green victimology* concept as an internalized perspective in its criminal base. The authors are of the opinion that the *green victimology* concept can be used to conceptualize two parameters, namely; *First*, the philosophical basis for the position of non-human entities as victims of criminal acts; and *second*, determining the purpose of punishment in accordance with the framework of environmental protection and management.

The first parameter as a philosophical foundation is based on ecological justice and the paradigm of ecocentrism. The ecological justice approach justifies that the victims of crime are the environment that views humans as not the only component in the ecosystem whose interests must be preserved.³¹ Through the ecological justice approach, the existence of mutually influencing relationships between humans and non-human entities is reflected. Thus providing a basis for considering the position of non-human entities in the hierarchy of victimization and giving rise to the idea of equality in victimization.³² The idea originated from Schlosberg's thought which outlined that the principles in the ecocentrism paradigm that view non-human entities such as animals, plants and even rivers as potential rights bearers and/or are objects that require human care to be given respect and formal recognition.³³

The paradigm of ecocentrism is quite ideal in terms of providing a philosophical basis that non-human entities have a degree equal to humans. Ecocentrism can be the answer to a perspective that is exclusively centered on human interests or referred to as anthropocentrism. The consequence of the anthropocentrism paradigm is that it is human interests that become the benchmark in determining the intrinsic value of non-human entities which are finally constructed within the legal framework.³⁴

³¹ R. D. White, *Environmental Harm: An Eco-Justice Perspective* (The Policy Press, 2013).

³² Rob White, "Green Victimology and Non-Human Victims," *International Review of Victimology* 24, no. 2 (May 6, 2018): 239–55, <https://doi.org/10.1177/0269758017745615>.

³³ David Schlosberg, *Defining Environmental Justice* (Oxford University Press/Oxford, 2007), <https://doi.org/10.1093/acprof:oso/9780199286294.001.0001>.

³⁴ V. De Lucia, "Competing Narratives and Complex Genealogies: The Ecosystem Approach in International Environmental Law," *Journal of Environmental Law* 27, no. 1 (March 1, 2015): 91–117, <https://doi.org/10.1093/jel/equ031>.

Based on this description, protected wildlife should be identified as victims of wildlife trafficking, not just as objects of such crime. The question is, how to qualify protected wildlife as non-human victims while acknowledging its intrinsic value? According to the authors belief, this can be fulfilled by comprehensively examining the status of wildlife from the threat of extinction and the conservation status of related species as a basis for recognizing the intrinsic value inherent in it. At least in the international community agreement, two documents are known that serve as guidelines in looking at the status of protected wildlife. The first document is *the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), which is an international agreement that guarantees legal, traceable and sustainable trade in wild plants and animals. And the second document, *The International Union for Conservation of Nature's* (IUCN) *Red List of Threatened Species*, is a document that provides information on the conservation status of animal, fungal and plant species in terms of biodiversity.

CITES as an international agreement has been ratified by Indonesia through Law Number 5 of 1994 on the Ratification of the United Nations Convention on Biological Diversity. The ratification is a form of Indonesia's commitment to referring to CITES as a guiding legal framework in the trade in protected wildlife.³⁵ CITES contains appendices which provide lists of plant and wildlife species that are protected from exploitation and illegal trafficking, including Appendices I, II and III. Appendix I provides the list of endangered species that are prohibited from being traded in any forms, Appendix II provides the list of species that are not endangered, but can be endangered if they continue to be traded without regulation and control, and Appendix III provides the list of species that are included on the basis of requests from CITES participating countries that have regulated the trade of such species and that require cooperation with other countries in terms of preventing unsustainable exploitation and illegal trafficking.³⁶

³⁵ Wahyadyatmika Permana Adi, "Implementasi CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Dalam Menangani Perdagangan Kukang Ilegal Di Indonesia," *Journal of International Relations* 3, no. 4 (2017): 21–31, <http://ejournal-s1.undip.ac.id/index.php/jihiWebsite:http://www.fisip.undip.ac.id>.

³⁶ CITES, "The CITES Appendices," <https://cites.org/eng/app/index.php>, n.d.

The second document, the IUCN Red List, provides the most complete list of information on the global conservation status of animal, plant and fungal species which is systematically compiled to show changes in conditions on earth and the risk of extinction of a group of species.³⁷ In the IUCN Red List, there are a number of categories that qualify the conservation status of a species group as follows:³⁸

- a. *Extinct (EX)*, A taxon is Extinct when there is no reasonable doubt that the last individual has died.
- b. *Extinct In the Wild (EW)*, A taxon is Extinct in the Wild when it is known only to survive in cultivation, in captivity or as a naturalized population (or populations) well outside the past range
- c. *Critically Endangered (CR)*, A taxon is Critically Endangered when the best available evidence indicates that it meets any of the criteria A to E for Critically Endangered, and it is therefore considered to be facing an extremely high risk of extinction in the wild.
- d. *Endangered (EN)*, A taxon is Endangered when the best available evidence indicates that it meets any of the criteria A to E for Endangered, and it is therefore considered to be facing a very high risk of extinction in the wild.
- e. *Vulnerable (VU)*, taxon is Vulnerable when the best available evidence indicates that it meets any of the criteria A to E for Vulnerable, and it is therefore considered to be facing a high risk of extinction in the wild.
- f. *Near Threatened (NT)*, A taxon is Near Threatened when it has been evaluated against the criteria but does not qualify for Critically Endangered, Endangered or Vulnerable now, but is close to qualifying for or is likely to qualify for a threatened category in the near future.
- g. *Least Concern (LC)*, A taxon is Least Concern when it has been evaluated against the criteria and does not qualify for Critically Endangered, Endangered, Vulnerable or Near Threatened.
- h. *Data Deficient (DD)*, A taxon is Data Deficient when there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status.
- i. *Not Evaluated (NE)*, A taxon is Not Evaluated when it is has not yet been evaluated against the criteria.

Based on the IUCN Red List category, there are three categories that are critically endangered (CR), endangered (EN), and vulnerable (VU). Although it is not an

³⁷ IUCN, "IUCN Red List 2017-2020 Report," 2017.

³⁸ IUCN Species Survival Commission, "Guidelines for Using the IUCN Red List Categories and Criteria THE IUCN RED LIST OF THREATENED SPECIES™," 2024, <https://www.iucnredlist.org/documents/RedListGuidelines.pdf>.

international agreement document like an international agreement that has binding force for the participating countries. The IUCN Red List can be qualified as a *database document* that makes a positive contribution to species conservation and has the potential to be an informative indicator that can be used to monitor the conservation status of certain species. In addition, the IUCN Red List can also be used as a determining indicator for the formation of conservation management policies³⁹ *In Situ* and *Ex Situ* in accordance with the vision and goals of a country's conservation.⁴⁰ The IUCN Red List can be used as a basis for CITES renewal.⁴¹ Therefore, it is crucial to look at a broader picture of the protection and conservation status of a particular species in order to collaborate with CITES and the IUCN Red List.⁴²

Based on the description above, the operationalization of *green victimology* concept in the first parameter, which is to provide a philosophical basis for the position of non-human entities as victims of criminal acts, will be based on the ecocentrism paradigm and ecological justice approach, and consider the conservation status of protected wildlife in both CITES and the IUCN Red List as the basis for considering its intrinsic value. In terms of the CITES technical guidelines, Indonesia has already had a technical regulation, namely the Regulation of the Minister of Environment and Forestry Number P.20/MENLHK/SETJEN/KUM.1/6/2018 on the Protected Species of Plants and Animals, thus the three documents can be elaborated as a basis for more comprehensive consideration in qualifying protected wildlife as victims of crime according to the intrinsic value attached to it.

The second parameter is related to the purpose of punishment based on the purpose of crime prevention of *deterrence*. The theory of the purpose of criminal *deterrence* emphasizes the purpose in terms of influencing behavior while preventing others

³⁹ Jessica Betts et al., "A Framework for Evaluating the Impact of the IUCN Red List of Threatened Species," *Conservation Biology* 34, no. 3 (June 13, 2020): 632–43, <https://doi.org/10.1111/cobi.13454>.

⁴⁰ Philip J.K. McGowan, Kathy Traylor-Holzer, and Kristin Leus, "IUCN Guidelines for Determining When and How Ex Situ Management Should Be Used in Species Conservation," *Conservation Letters* 10, no. 3 (May 26, 2017): 361–66, <https://doi.org/10.1111/conl.12285>.

⁴¹ Daniel W. S. Challender et al., "Identifying Species Likely Threatened by International Trade on the IUCN Red List Can Inform CITES Trade Measures," *Nature Ecology & Evolution* 7, no. 11 (October 2, 2023): 1944–1944, <https://doi.org/10.1038/s41559-023-02228-0>.

⁴² Alexander Gorobets, "Wild Fauna Conservation: IUCN-CITES Match Is Required," *Ecological Indicators* 112 (May 2020): 106091, <https://doi.org/10.1016/j.ecolind.2020.106091>.

from committing a criminal act.⁴³ The basic idea of the theory is the idea that humans are rational creatures so that the perpetrator of crime is a person who seeks to maximize the profits obtained through crime.⁴⁴ Mahrus Ali explained that there are three arguments that can explain the relevance of *the theory of deterrence* in the crime of trafficking in protected wildlife, including:⁴⁵ *First*, the losses and impacts caused by environmental crimes are very large. *Second*, losses caused by environmental crimes affect all elements of life both directly and indirectly, starting from the state, society, the environment and even future generations. *Third*, the motivation of the perpetrators of environmental crimes which is based on a rational calculation of profit and loss. *Fourth*, environmental crimes are generally committed by perpetrators who act for and/or on behalf of corporations.

Asworth provided more detailed parameters related to the use of criminal sanctions that contain general prevention, including:⁴⁶

- a. The value of criminal sanctions must not be less than the profits obtained from the criminal act.
- b. The more serious the damage caused by the crime and the greater the potential costs caused, the more severe sanctions are deserved.
- c. The criminal sanctions set must be sufficient to encourage the public not to commit criminal acts.
- d. Criminal sanctions must be adjusted to the criminal act, so that it is able to contain the motive or purpose of a person committing a criminal act.
- e. Criminal sanctions should not be more than what is necessary and must be in accordance with applicable regulations.

The results of Ali and Asworth's thinking display a common thread that the theory of *deterrence* seeks to explore the basis of the rationality of the perpetrator in committing a crime, and is prevented through the threat of criminal sanctions that must not be less than the profit obtained and adjust the level of seriousness and potential costs caused. The authors agree with this idea that the assessment of criminal sanctions in order to

⁴³ Muladi and Areif, *Teori-Teori Dan Kebijakan Pidana*.

⁴⁴ Anthony Ellis, "A Deterrence Theory of Punishment," *Source: The Philosophical Quarterly* 53, no. 212 (2003): 337–51, <https://www.jstor.org/stable/3543120>.

⁴⁵ Mahrus Ali, *Hukum Pidana Lingkungan* (Depok: Rajagrafindo Persada, 2020).

⁴⁶ Andrew Ashworth, "The Common Sense and Complications of General Deterrent Sentencing," *Criminal Law Review*, no. 7 (July 1, 2019): 564–78, <https://search.informit.org/doi/10.3316/agispt.20190703013517>.

prevent environmental crimes must pay attention to the benefits obtained by the perpetrators and consider the consequences caused, including potential consequences. The implementation of *the theory of deterrence* in the applicative policy stage is tremendously important as a basis for criminalization that can be operationally functioned as a criminal guideline.

Based on the description above, the application of the *green victimology* concept in the criminal imposition of criminal penalties for the crime of trafficking in protected wildlife contains two parameters, namely *green victimology* as the philosophical basis for the recognition of non-human entities, especially protected wildlife as victims of crime. As well as the *theory of deterrence* as the basis for criminalization that needs to be operationalized in the guidelines for criminalizing the crime of wildlife trafficking. These two parameters will be applied by the author in analyzing ten criminal verdicts related to the trade in protected wildlife.

2. Patterns of Criminal Penalties for Trafficking in Protected Wildlife based on *the Perspective of Green Victimology*

The ten verdicts on the crime of trafficking in protected wildlife are the object of this study. Selected based on the time the verdict was issued, namely in the last 10 years, namely from 2014 to 2023 by sampling one verdict each year with an indictment, namely Article 21 paragraph (2) *juncto* Article 40 paragraph (2) of the KSDA Law which reads "*Whoever deliberately violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be sentenced to a maximum of 5 (five) imprisonment year and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah)*". The description of the ten decisions is as follows:

Verdict	Criminal Objects	Summary of Consideration of the Decision	Criminal Penalties
No: 112/Pid.Sus/2014/Pn. Bky	723 green turtle eggs	The defendant was proven to trade turtle eggs which are protected animals. The turtle eggs are purchased for Rp. 3,200 per egg and will be sold at Rp. 3,700 per egg in Serikin, Malaysia.	Imprisonment for 1 month and a fine of Rp. 500,000,-, a subsidy of 15 days of imprisonment.

No: 236/Pid.Sus/2015/PN.Ksp	1 Sumatran Tiger skin; 4 Sumatran Tiger fangs; Bones and skull of a Sumatran tiger	The defendants were proven not to intend to ensnare Sumatran tigers, but rather to ensnare deer. However, it is the Sumatran tiger that is entangled. The defendants did not know that the Sumatran tiger was a protected animal, but knew that selling or killing tigers was prohibited by applicable law in Indonesia.	Prison sentence for 2 years each and a fine of Rp. 50,000,000,-, a 1-month prison subsidy
First Level No: 68/Pid.Sus/2016/PN. Mtr <i>jo</i> . Appeal Level: No. 37/PID/2016/PT. Mtr, <i>jo</i> Cassation Level: No. 2186 K/PID.SUS-LH/2016	1 Yellow-crested Cockatoo	The defendant was proven to have protected wildlife, namely the yellow-crested cockatoo	Imprisonment for 1 month and 15 days with the provision that the criminal does not need to be served unless there is a decision of the Judge stating his guilt and has permanent legal force before the end of the probation period of 3 months and a fine of Rp. 2,000,000,- a subsidy of 1 month of imprisonment
No: 176/Pid.B/LH/2017/PN. Lbo	3 large yellow crested cockatoo; 7 black capped lory; 1 dora lorikeet; 1 small yellow crested white cockatoo; 1 ternate lory	The defendants were proven to have transported protected wild animals (all types of the birds) with the intention to trade them.	Imprisonment for 1 year and 8 months and a fine of Rp. 100,000,000,-, a subsidy of 3 month of imprisonment.
First Level: No. 126/Pid.Sus-LH/2017/PN. Lbb, <i>jo</i> Appeal Level: No: 26/Pid.Sus/LH/2018/PT.BDG, <i>jo</i> Cassation Level: No. 1879 K/PID.SUS-LH/2018	6 lorises	The defendant was proven to have protected wildlife, namely slow lorises. However, the defendant had no intention of buying and selling it and the defendant was very sorry to put it on Facebook so that there were people who wanted to buy it. Criminal punishment is not just retribution but also educates and benefits the defendant as well as other people and society	Prison sentence of 1 year and 6 months and a fine of Rp. 100,000,000,- a subsidy of 6 months imprisonment.
No: 121/Pid.B/LH/2019/PN. Bit	7 orange-crested cockatoos; 1 yellow-crested cockatoo; 1 Ternate Casuatry Bird;	The defendant was proven to have kept and intended to trade in protected wildlife.	Imprisonment for 1 year and 6 months and a fine of Rp. 15,000,000,-, a subsidy of 1 month of imprisonment.

	1 black-headed parrot; .		
No: 72/Pid.B/LH/2020/PN.Plw	1 Sumatran Tiger	The defendant was proven to have trafficked Sumatran tiger body parts and stored its skin.	Imprisonment for 3 years and 6 months and a fine of Rp. 100,000,000,-, a subsidy of imprisonment for 2 months.
No: 208/Pid.B/LH/2021/PN. Kot	1 Horned Deer and 1 Sambar Deer	The defendant was proven to have arrested the Muncak Kijang and the Sambar Deer who were protected. The animals are traded and their meat is consumed privately.	Imprisonment for 7 months and a fine of Rp. 10,000,000, a subsidy of imprisonment for 1 month
No: 841/Pid.B/LH/2022/PN.Sda	570 cucaks; 122 parrots; 30 birds of caping ongklet; 108 Javanese gelatik birds 39 Malay serindit birds; 6 cuckoo ranti; 22 bushy birds; 5 mangroves; 19 forest kuccas; 17 village kucica; 11 Bornean yuhina; 1,997 bridal honeybirds; 598 crested manyurs; 4 birds of the gadung family; 50 bush birds; 27 mangrove Ikatan birds; 208 bridal honeybirds; 187 crested manyars;	The defendant was proven to have trafficked protected wildlife (as in the details of the criminal object).	Imprisonment for 1 year and a fine of Rp. 25,000,000,- a subsidy of 1 month of imprisonment.
Tingkat Pertama: 778/Pid.B/LH/2023/PN.Sda,	The skin of pangolin scales weighs 150 kilograms.	The defendant was proven to trade pangolin scaly skins.	Imprisonment for 4 months and 15 days and a fine of Rp. 10,000,000, a subsidy of imprisonment for 1 month

Table 1.1 Summary of Wildlife Trafficking Convictions

Based on the ten criminal verdicts above, nine of them contain economic motives in the form of trafficking. There is only one decision underlined by the motive to be kept privately, namely in Decision No. 126/Pid.Sus-LH/2017/PN. However, not all criminal cases in Table 1.1 describe the scale or existence of organized trafficking in protected wildlife with international markets. The perpetrators generally traffic the animals in community groups on social media.

In addition, when examined, the majority of the aggravating circumstances against the defendant from all Court Decisions are that the defendant does not support the government's program in environmental protection efforts, especially efforts to protect and prevent animals that are protected from extinction. However, in decision number 841/Pid. B/ LH/ 2022/PN., it was found that it was strange because the circumstances that aggravated the defendant in the verdict, namely that the defendant had contradicted the government's program in drug eradication. This is highly interesting, considering this case is not included in drug crimes, but the Panel of Judges actually includes aggravating circumstances regarding drug crimes. According to the authors, this may have happened due to the lack of seriousness of the Panel of Judges in handling the case of protected animals so that the Panel of Judges only *copied and pasted* the decisions that he had tried.

Furthermore, regarding the mitigating reasons that were most widely used by the Panel of Judges from all the decisions examined, among others; (1) The defendant regrets their actions; (2) The defendant has family dependents; (3) The defendant has never been convicted before; (3) The defendant does not understand the animals that are prohibited from being trafficked due to lack of socialization.

Based on the findings of the most aggravating and mitigating circumstances that judges use in criminal decisions against protected animals, the authors identify several problems regarding the measures of aggravating and mitigating circumstances whether the Panel of Judges only imposes on the basis of intuition alone or is measured objectively. For example, regarding the incriminating negligence, the defendant did not support the government's program in environmental protection efforts, especially efforts to protect and prevent animals protected from extinction. Is

every crime against protected animals not also necessarily contrary to the government's program to preserve protected animals? Then, how to objectively measure that the defendant regrets his actions? Or is it enough to say the words that express "regret for the act" before the trial?

The panel of judges needs to pay attention to several things in determining these aggravating circumstances so that the determination is not carried out arbitrarily, unobjectively or unfounded.⁴⁷ On the other hand, laws and regulations also vaguely and firmly formulate the criteria referred to as aggravating and mitigating circumstances, as well as what circumstances can be considered aggravating and mitigating factors.⁴⁸ However, it does not mean that the determination of these aggravating and mitigating circumstances can be done carelessly. Unfortunately, the determination of these aggravating and extenuating circumstances is often based solely on the intuition of the Panel of Judges.⁴⁹ As a result, the deliberation process has the potential to be less objective, which can ultimately affect justice and legal certainty in law enforcement

The authors will summarize the ten rulings above for further analysis using two parameters of *green victimology* to provide a more comprehensive overview of the pattern of criminal penalties for trafficking in protected wildlife based on the perspective of *green victimology*, with the following description:

Verdict	PP No. 7 tahun 1999	PermenLHK 2018	CITES	IUCN	Criminal Purpose
112/Pid.Sus/2014/PN.Bky	✓	✓	-	Endangered	-
235/Pid.Sus/2015/PN.Ksp	✓	✓	Appendix I	Endangered	-
68/Pid.Sus/2016	✓	✓	-	Least Concern	Theory of Relative
176/Pid.B/LH/2017/PN.Lbo	-	✓	Appendix I	- Least Concern	-

⁴⁷ Julian V. Roberts, "Punishing, More or Less," in *Mitigation and Aggravation at Sentencing* (Cambridge University Press, 2011), 1–20, <https://doi.org/10.1017/CBO9780511979170.002>.

⁴⁸ DWI HANANTA, "AGGRAVATING AND MITIGATING CIRCUMSTANCES CONSIDERATION ON SENTENCING," *Journal of Law and Justice* 7, no. 1 (March 21, 2018): 87, <https://doi.org/10.25216/jhp.7.1.2018.87-108>.

⁴⁹ Roberts, "Punishing, More or Less."

				- Critically Endangered - Vulnerable	
26/Pid.SUS-LH/2018/PT.Pdg.	✓	-	Appendix I	Endangered	Theory of Relative
121/Pid.B/LH/2019/PN.Bit	-	✓	- Appe ndix I - Appe ndix II	- Vulnarable - Critically Endangered - Least Concern	-
72/Pid.B/LH/2020/PN.Plw	-	✓	Appendix I	Endangered	Theory of Relative
208/Pid.B/LH/2021/PN.Kot	-	✓	-	- Least Concern - Vulnerable	-
841/Pid.B/LH./2022/PN.Sda	-	✓	Appendix II	- Least Concern - Endangere d - Near Threatened	-
778/Pid.B/LH/2023/PN.Sda	-	✓	Appendices I	Critically Endangered	-

Table 1.2 Parameter Analysis *Green Victimology*

Based on table 1.3 above, it can be seen clearly from all the decisions that the authors researched, it was found that 7 (seven) Court decisions in terms of the status of criminal objects are classified as *Appendix I*. This means that the species is endangered and is or may be endangered due to trade and exploitation.⁵⁰ Animals classified as *Appendix I* described in CITES are also included in the *IUCN Red List* group and must receive special treatment and special actions are held to restore the population of animals categorized as *Red List* by the IUCN.⁵¹

Based on the results of the authors' research on all Court decisions reviewed by the author in this study, none of them were found in Court decisions that used the concept of *green victimology* as legal consideration by judges in deciding a case of a crime against protected animals. How is it possible for a judge to use the concept of *green*

⁵⁰ The International Union for Conservation of Nature, "Artivle II (1) Convention on International in Endangered Species of Wild Fauna and Flora." (1973).

⁵¹ Collin Adi Pratama, "PERBANDINGAN PERATURAN CITES 1975 PADA PERATURAN PEMERINTAH NOMOR 8 TAHUN 1999 DAN IMPLEMENTASINYA PADA KASUS DI INDONESIA," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 1 (October 31, 2022): 100–114, <https://doi.org/10.23920/litra.v2i1.946>.

victimology as a legal consideration in a decision, while regarding the status of protected animals listed in the category of Appendix I, CITES and IUCN, it is not taken into account by the judge at all when deciding the case he is trying in terms of 10 (ten) court decisions that the author researches.

This means that the judges does not use the parameters of *the green victimology* viewpoint in deciding a case, which expands the definition of the victim to include non-humans. Because the court decisions that the author researched did not use the concept of *green victimology*, the decisions by the judges did not pay attention to ecological justice. The justice that must be fulfilled is not only justice for humans, but also ecological justice which all have their own intrinsic value and are in line with the concept of *green victimology*.⁵² Thus, in the court decisions that the authors looked into, the judges merely served as the mouthpiece of the law which is limited to applying *dass sollen* to *dass sein* and neglected to pay attention on the ecological justice.

If you look at the criminal formulation in the KSDA Law, the concept of punishment still adheres to the theory of retaliation or absolute theory. Criminal theories and criminal objectives offered in the development of law have undergone changes in accordance with the needs of society. Theoretically, the determination of the type of crime, the severity/duration of the crime and the rules for the implementation of the crime must be based on the criminal theory used. That is, the use of certain theories has implications for determining these three things.⁵³ The author found 3 (three) court decisions out of 10 (ten) decisions studied applying *the deterrence theory* in terms of imposing criminal penalties on the defendant. According to the author, the judge has appropriately used *the deterrence* theory as the basis for imposing criminal penalties because the criminal theory that is in accordance with the criminal system in conservation cases in the field of the environment is the theory of deterrence.

The implications of not using *green victimology* as a perspective in deciding criminal cases of trafficking in protected wildlife are at least related to philosophical, juridical,

⁵² Salim, Utami, and Fernando, "GREEN VICTIMOLOGY: SEBUAH KONSEP PERLINDUNGAN KORBAN DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA."

⁵³ Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pidanaaan," *Halu Oleo Law Review* 6, no. 2 (September 28, 2022): 176–88, <https://doi.org/10.33561/holrev.v6i2.4>.

and sociological aspects. The author argues that from a philosophical point of view, it has implications for animals not to be recognized as victims of crime, but only as objects and even worse just as evidence.

The juridical implications are related to the potential disparity in the imposition of a criminal sentence in a case that has similar characteristics, as we have described earlier. However, the potential for this disparity requires further comprehensive research. The sociological implications are related to the sense of justice in society. If you look at it, the majority of the cases that the author researches involve actors with economic motivation with various variations of profits. But if you look at the common thread, almost the majority come from the downward economic circle.

In addition, the authors also found one case Number 26/Pid.Sus/LH/2018/PT. BDG, wherein the perpetrators are proven to keep protected animals instead of trafficking them. The perpetrator was still sentenced to 1 year and 6 months and a fine of 100 million rupiah. A similar case occurred in September 2024, involving someone keeping four protected wildlives, namely four Javan hedgehogs (*Hystrix javanica*). The community's insistence not to punish the perpetrator is because it is considered that he does not have malicious intentions. Finally, the Denpasar District Court answered by acquitting the perpetrator because he was considered not to have a *mens rea*.⁵⁴

The description at least illustrates the sociological implications of the community's sense of justice. It requires that both the police, the prosecutor's office and the court can formulate alternative legal solutions for the crime of trafficking in protected wildlife more comprehensively. Especially in terms of deepening the malicious intentions and economic motives of the perpetrators.

CONCLUSION

Based on the results derived from the above analysis, the authors conclude that the concept of *green victimology* plays a significant role as a perspective that is able to

⁵⁴ Yohanes Valdi Seriang Ginta and Andi Hartik, "Tak Ditemukan Niat Jahat, Nyoman Sukena Dituntak Ditemukan Niat Jahat, Nyoman Sukena Dituntut Bebas Dalam Perkara Landak Jawa," *Kompas*, September 13, 2024.

provide recognition to animals as victims of crime. The concept of *green victimology* can be implemented in the applicable policy of criminal penalties for the trade in protected wildlife by combining CITES and IUCN *Red List* as well as deterrent-based criminal purposes as the basis for judges' legal considerations. The above analysis also show that of the ten objects of court decisions that have been studied, the authors did not find any implementation of *green victimology* in the judges' legal considerations in accordance with the parameters that have been formulated. Thus no specific pattern was found in the criminal imposition of protected wildlife trafficking cases. This has implications for philosophically animals have not been recognized as victims, juridically have the potential to give birth to criminal disparities and sociologically have the potential to contradict the values of community justice.

Therefore, the authors recommend that guidelines for criminal punishment in environmental criminal cases can be established by considering the values that exist in *green victimology*. The guidelines can be an alternative solution in terms of answering the systematic impact of not being recognized as victims of crimes that are influential in the perspective of both legislators in shaping legislation, and law enforcement in constructing and deciding cases of trafficking in protected wildlife. These guidelines can be implemented by the police in initiating investigations and investigations, the prosecutor's office in drafting prosecutions and the court in considering the law of court decisions. This research specifically seeks to provide an idea of the parameters of criminal imposition based on the concept of *green victimology* by the court, and for research with similar themes can continue to be developed and produce more comprehensive and applicable ideas.

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There is no conflict of interest in the publication of this article.

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